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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,788	02/22/2002	Robert Petermann	88265-6778	2714
29157	7590	09/21/2005	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135				HENDRICKS, KEITH D
		ART UNIT		PAPER NUMBER
				1761

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/081,788	PETERMANN ET AL.	
	Examiner Keith Hendricks	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 June 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 11 is/are rejected.
- 7) Claim(s) 11 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

This action is in response to communication of June 23rd, 2005. Claims 1-9 and 11 pending in this action. Claim 10 has been cancelled.

Claim Objections

Claim Objections withdrawn in view of applicant's amendment to claim 3.

Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 has been amended to be dependent upon claim 1. Currently amended claim 1 currently includes the limitation presented by claim 11, that being the global viscosity of each mass being about the same.

Claim Rejections - 35 USC § 112

Claim Rejections withdrawn in view of applicant's amendments to claim 8.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1 and 11 ^{are} ~~is~~ rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims do not indicate the degree of similarity between the viscosities of the fermented milk products.

Claim Rejections - 35 USC § 102

Claim Rejections made over claims being anticipated by Roche et al have been withdrawn.

Claim Rejections made over claims being anticipated by Naoki et al have been withdrawn.

Claim Rejections made over claims being anticipated by Warendorf have been withdrawn.

Claims 1-5, 7-8, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Daravingas et al (US Pat 6,235,320). The rejection presented in the previous action is fully incorporated herein. The amendments to the claims incorporate previously presented limitations into a new claim. The prior art discloses all the limitations of the previous rejection, thus the rejection remains valid.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravingas et al, in view of Warendorf (EP 0 853 888). Warendorf is taken as cited in the previous action. Previously presented rejection of claim 9 is fully incorporated herein. As set forth in the previous action, Daravingas did not meet the limitation of instant claim 6. The claim was rejected by currently withdrawn art Roche et al and Warendorf. Obvious motivation was set forth in the previous action to combine the inventions of Daravingas and Warendorf. Given that Warendorf disclosed the limitation

of claim 6, one of ordinary skill in the art combining the two inventions would have arrived at applicant's claimed invention.

Response to Arguments

Applicant's arguments, filed June 23rd, 2005, with respect to rejections over 35 U.S.C. 102(b) (Roche et al, Naoki et al, and Warendorf), have been fully considered and are persuasive. The rejections of claims 1-6 have been withdrawn.

Applicant's arguments filed June 23rd, 2005 have been fully considered but they are not persuasive. Daravingas discloses a viscosity range including 15000 cps. The overlap of ranges would provide anticipation to the limitation of the claim (see Abstract).

In regard to applicant's remarks of the combination of Daravingas and Warendorf, the amendment to claim 1 discloses a limitation which had been set forth previously in Daravingas. The previous rejection provided combination of the complete inventions of Daravingas and Warendorf, thus including all the features having been disclosed therein.

Furthermore, the references have been cited to set forth that all the limitations of the claims have been disclosed within the art. Given that both inventions disclosed milk based food products, each being presented as a combination of unique food components. By disclosing food products that are of themselves are composition of unique food products, one of ordinary skill in the art would have been provided proper motivation to combine to the degree set forth in the previous action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Myers // *Keith Hendricks* whose telephone number is 571-272-
6466 // *571-272-1401*. The examiner can normally be reached on Monday-Friday, 8am-4: 30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

acm



KEITH HENDRICKS
PRIMARY EXAMINER